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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831.301	05/08/2001	Robert W. Killick	038441/0104	2790

22428 7590 03/21/2003

FOLEY AND LARDNER
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3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

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DATE MAILED: 03/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/831,301

Applicant(s)

Killick et al

Examiner

Alton Pryor

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1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 24, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 and 32-45 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-38 and 41-45 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 11, 15-20, 22, 27, 29, 30, 32, 33, 39, and 40 is/are rejected.
- 7) ☒ Claim(s) 3, 5-10, 12-14, 21, 23-26, and 28 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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Claim Rejections under 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,2,4,11,15-20,22,27,29,30,32,33,39,40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saphakkul (US 4964874; 10/23/90 - on record) and JP 58023898; 2/12/83 - on record).

Saphakkul discloses a hair treatment composition comprising 0.1 to 5% fatty alcohol (lipophilic solvent) plus 0.1 to 5% 12-22C alkyl quat. ammonium chloride (cationic emulsifier). See column 2 lines 6-64. Saphakkul teaches the addition of dyes (enhancing compounds) to his composition. See column 2 line 66- column 4 line 4. Saphakkul also teaches the addition of ethanol (cosolvent) to his composition. See column 4 lines 16-27. Saphakkul teaches that the composition can exist at acidic pH of 2-6. See column 4 lines 30-33. Saphakkul does not teach the composition comprising ammonium chloride (lipophilic plant nutrient). However, JP '898 teaches a hair treatment composition comprising 0.7 to 7.0 % ammonium chloride, 0.1 to % % alcohol, 0.5-20 surfactant (enhancing compound) . See abstract. It would have been obvious to

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one having ordinary skill in the art to combine compositions. One would have been motivated to do this because both prior art compositions are individually taught to be used to treat hair.

Claim Objection / Allowable Subject Matter

Claims 3,5-10,12,13,14,21,23-26,28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 34-38,41-45 are allowable. The prior art does not teach or suggest instant homogeneous liquid comprising mineral oil or fatty acid esters.

Other Matters

Election Requirement made by Examiner is withdrawn.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Alton Pryor

ALTON N. PRYOR
PRIMARY EXAMINER
Primary Examiner, AU 1616

3/14/03